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UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT

In Re: CLARE CREEK (LEDUFF) KELSEY,
Debtor,

Chapter 7 Case
#94-10415

CLARE CREEK (LEDUFF) KELSEY,
Plaintiff
v.

Adversary Proceeding
#00-01034

GREAT LAKES HIGHER EDUCATION CORPORATION; A.M. MILLER; USA GROUP GUARANTEE SERVICES, INC.; STUDENT SERVICES, INC.; GRADUATE LOAN CENTER; ZWICKER AND ASSOCIATES, P.C; NEVADA DEPARTMENT OF EDUCATION; VAN RU CREDIT CORP.; NCO FINANCIAL SYSTEMS, INC.; DIVERSIFIED COLLECTION SERVICES, INC.; CITIBANK (SOUTH DAKOTA), N.A.; AMAN COLLECTION SERVICE, INC.; THE ED FUND/CALIFORNIA STUDENT AID COMMISSION; AMERITRUST OF CLEVELAND; CITIBANK NY STATE; MELLON BANK MARYLAND; MELLON BANK NA; PHILADELPHIA HIGHER EDUCATION ASSISTANCE ADMINISTRATION; STUDENT LOAN MARKETING ASSOC. and KEYBANK USA
Defendants/Respondents.

Appearances of Counsel:

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MEMORANDUM OF DECISION DENYING PLAINTIFF'S RENEWED MOTION FOR SUMMARY JUDGMENT

The plaintiff, Clare Creek (LeDuff) Kelsey, has filed a Renewed Motion for Summary Judgment (Dkt. #190-1) seeking an Order granting a reconsideration of this Court's Memorandum of Decision Denying Plaintiff's Motion for Summary Judgment dated April 13, 2001.

The basis of the instant motion is the plaintiff's contention that this Court failed to consider "evidence adduced by the Defendants in reliance on an Order of February 13, 2001 (sic), reopening discovery or evidence gathered by the Plaintiff in rebuttal of Defendant's theories and suppositions." There is no Order dated February 13, 2001. There was a hearing on February 13, 2001, and the related Order dated March 12, 2001 in pertinent part provides that discovery is permitted to require the production of certain original documents by the plaintiff and related forensic testing of those documents by or on behalf of the defendants during the extended discovery period of March 30, 2001. The March 12th Order also provides that exhibits filed from that date forward shall only be admitted in accordance with the Scheduling Order and shall relate only to evidence that may arise during the additional and limited discovery as authorized by this Court. The plaintiff also asserts a "recollection that this Court's February 2001 order reopening discovery provided that plaintiff would be permitted to amend her Motion for Summary Judgment to include any evidence adduced during the extended discovery." The Order dated February 2, 2001 extended discovery for 60 days until March 30, 2001 to allow an "independent medical evaluation" of the Plaintiff and a reconvening of the deposition of Dr. Barney. The Order also indicated that the Court would not address the plaintiff's pending summary judgment motion until the extended discovery period closed to allow the parties to supplement their filings with any additional information which is established during the additional discovery period. Neither Order contemplates or permits the parties to file unlimited additional evidence or exhibits regarding evidence adduced during the extended discovery period that may relate to any and all claims or defenses raised in the summary judgment papers, or to rebut an opponent's "theories and

suppositions."

In the Renewed Motion for Summary Judgment, the plaintiff "refers the court" to various additional exhibits attached to Plaintiff's Supplemental Trial Brief, including an Affidavit of Paul Gillies, Esq. dated April 16, 2001, the Affidavit of Dr. Christine A. Barney, M.D. dated April 12, 2001, an Affidavit of Stephen S. Blodgett, Esq. dated April 16, 2001, an unverified statement from the Vermont Board of Bar Examiners reflecting the current licensure of plaintiff's counsel, an Affidavit of Edward Van Doran, Esq. dated April 16, 2001, the unverified Psychological Evaluation Report of Dr. Mary E. Willmuth dated March 26, 2001, the unnotarized and undated Affidavit of Mark Sinclair, Esq., a Memorandum of Decision apparently issued pursuant to an adversary proceeding in the case of In re Doherty, Case No. 95-13797, U.S. Bankruptcy Court for the Western District of New York dated March 27, 1998 (Kaplan, J.), an apparent unverified e-mail message from Mr. Kevin Campana to the plaintiff dated February 2, 2001 terminating the plaintiff's employment as a research attorney, and an unsigned, undated and otherwise incomplete draft Affidavit of Joseph Obuchowski, Esq.

There is no indication in Plaintiff's Renewed Motion how any of the foregoing are within the confines of the limited supplementation of the record allowed by the Court pursuant to the above-referenced scheduling Orders. Nor is there any requisite Statement of Undisputed Facts filed in conjunction with the "renewed" summary judgment motion. Notably, the various exhibits referred to the Court are legally deficient because they include not only several unverified papers that may not be properly considered pursuant to a summary judgment motion, but verified papers that likewise may not be properly considered at trial under the Federal Rules of Evidence.

Moreover, other than the bare contention that the recent Memorandum of Decision of this Court somehow failed to consider "evidence adduced by the Defendants in reliance on an Order of February 13, 2001 (sic), reopening discovery or evidence gathered by the Plaintiff in rebuttal of Defendant's theories and

suppositions", the plaintiff provides no legal basis to allow the filing of a "renewed" summary judgment motion. No scheduling Order authorizes the parties to file successive or "renewed" dispositive motions beyond December 30, 2000. Regarding the contention that this Court did not consider certain papers filed after its ruling, plainly this Court could not consider the papers plaintiff points to - verified or otherwise - since they were not filed timely and for the most part were not dated until after the issuance of its ruling. More importantly, the plaintiff presents no statutory or legal basis for reconsideration or rehearing of this Court's prior ruling Bankruptcy Rule 9024, which is the only rule which seems to be possibly invoked by this motion and it pertains only to final orders and hence is of no support to the plaintiff's argument.

As stated in the recent Memorandum of Decision entered herein, "[t]his Court has considered the entire record in determining the merits of the pending summary judgment motion" and will not belabor the matter. On the contrary, I find that it does not serve the interests of judicial economy or advance a fair and just determination of the merits of this dispute to continually reargue or revisit the unsupported contention that the plaintiff is entitled to summary judgment as a matter of law in her favor based upon an ever growing record of disputed factual assertions. Rather than demonstrate the absence of any genuine issue of material fact, the further supplementation of the record provided primarily by the plaintiff serves to confirm rather than deny the existence of considerable disputed facts and opinions pertaining to the issues in this dispute clearly a trial is necessary to resolve these factual disputes. For the foregoing reasons, the plaintiff's Renewed Motion for Summary Judgment is denied and the matter remains scheduled for trial to commence April 19, 2001.

Dated this 17th day of April, 2001.

/s/ Colleen A. Brown
Colleen A. Brown
United States Bankruptcy Judge